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ABSTRACT

The legal rights of college students have changed substantially over the years, particularly during the 20th century. This paper provides a historical sketch of student rights, including a listing of significant events and cases, from the founding of Harvard College in 1636 to the bicentennial of the Constitution and the 50th anniversary of the Student Personnel Point of View in 1987. Key legal issues and the court decisions that stemmed from them are presented. Student rights in the areas of due process, freedom of expression, search and seizure, and privacy are outlined chronologically. The paper includes a brief introduction, a historical timeline, a listing of the most significant and interesting cases, a bibliography, and a legal rights "quiz." The appendix contains a copy of the Joint Statement of Rights and Freedoms of Students. (Author)

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LEGAL RIGHTS OF COLLEGE STUDENTS:
A HISTORY OF CASES, CONTROVERSIES AND COURT DECISIONS

ACPA/NASPA Joint Convention
Chicago, 1987

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KC,TS -- 9/16/87

WHY SHOULD YOU CARE ABOUT "THE LAW?"

Prior to 1965, only thirty-two landmark cases affecting student development in higher education had been adjudicated in the courts (Hammond and Shaffer, 1978). Since that time, litigation involving postsecondary education has increased dramatically. Issues involving student discipline, the student press, admissions standards, liability of administrators in supervision of activities, and provision of health and counseling services have all been litigated. Given the climate of the times, it appears not only prudent but necessary for student affairs professionals to understand the legal implications of what they do.

Unfortunately, most student affairs administrators do not have a strong background in the law. Lack of legal knowledge and training can become a formidable barrier when decisions that have legal ramifications are involved. Without such knowledge, poor decisions can be made. It is also possible to go too far in the other direction, by allowing potential legal concerns to outweigh other pressing objectives. One of the requisite skills for successful administration is the ability to sort through conflicting advice and make a decision based on the best information available. This task becomes much more difficult under the pressures of an increasingly litigious society and the pressures to minimize financial risks to an institution.

from:

M. J. Barr (Ed.). Student Affairs and the Law. New Directions for Student Services, no. 22. San Francisco: Jossey-Bass, June 1983.

LEGAL RIGHTS "QUIZ"

1. The Bill of Rights was ratified in 1787, as part of the Constitution of the United States.

True

~~False~~

ratified in 1791

2. The Amendment of the Constitution which prohibits "unreasonable searches and seizures" is the:

Ist

IVth

Vth

Vith

3. Title VII is part of the:

- a. Buckley Amendment
- b. Civil Rights Act of 1964
- c. The XIth Amendment
- d. The Higher Education Act of 1965

4. A Constitutional Amendment, once passed by Congress, must be approved by:

- a. 3/4ths of the states
- b. 2/3rds of the states
- c. all of the states
- d. all of the state legislatures

5. A suit involving a breach of one's Constitutional rights could be brought in:

- a. Federal court only
- b. State court first, then federal court
- c. Either type of court
- d. The U.S. Supreme Court only

6. Private colleges and universities are not normally subject to the restraints of the Ist and XIVth Amendments of the U.S. Constitution.

True

False

7. The "due process clause" is contained in which Amendment?

Ist

IVth

Xth

XIVth

8. Students at state colleges and universities are entitled, as a matter of right, to an (on-campus) appeal of their sanction if they are suspended or expelled from school.

True

~~False~~

no court has ever required this

9. The "in loco parentis" doctrine died on college campuses about the same time as the Student Personnel Point of View was adopted.

True

~~False~~

it "died" in 1961 in Dixon v. Alabama, 380 U.S. 711, 1965

10. A campus police officer must have "probable cause" in order to search a student's dormitory room.

True

False

HISTORICAL TIMELINE

1636	Harvard College founded
1638	Trial of Nathaniel Eaton- marks the beginning of the end of corporal punishment at Harvard
1718	"Boxing" is standard form of discipline
1755	"Boxing" is suspended as a means of discipline
1766	Bad Butter Rebellion at harvard- the first organized student protest
1787	United States Constitution
1791	Bill of Rights
1819	Dartmouth College case
1825	Colleges abandon Commons
1827	Merit roll/grades introduced
1830	<u>Dyspepsy Forestalled and Revisited</u>
1842	"Thoughts on the Present Collegiate System in the U.S." - Wayland
1850's	Town-gown riots in New Haven
1862	Morrill Land grant Act
1867	Johns Hopkins University founded
1868	14th Amendment ratified
1871	Civil Rights Act of 1871
1906	<u>U.S. ex rel Gannon v. Georgetown College</u>
1913	<u>Gott - in loco parentis</u>
1937	Student Personnel Point of View
1954	<u>Brown v. Board of Education</u>
1964	Civil Rights Act (Titles VI and VII)
1965	Higher Education Act
1967	Joint Statement on the Rights and Freedoms of Students
1969	<u>Tinker v. DesMoines</u>
1971	26th Amendment ratified - 18 year old vote
1972	Title IX
1974	Buckley Amendment
1975	<u>Goss v. Lopez</u>
1978	<u>Bakke</u>
1985	<u>New Jersey v. T.L.O.</u>
1986	University of Utah shanty case
1987	50th Anniversary of the SPPOV
	200th Anniversary of the Constitution

A. DUE PROCESS

"College authorities stand in loco parentis concerning the physical and moral welfare and mental training of pupils, and we are unable to see why, to that end, they may not make any rule or regulation for the government or betterment of their pupils that a parent could for the same purpose."

-Gott v. Berea College (1913)

A. Due Process - significant (or at least interesting) cases

1. North v. Illinois, 27 N.E. 54 (1891)

-Colleges and universities could make reasonable rules and regulations for the government and discipline of students. Consequently, a student was dismissed from the Univ. of Illinois for refusing to attend religious exercises. The court stated "...the will of the student is subservient to these who are at the time being his masters."

2. Gott v. Berea College, 161 S.W. 204 (1913)

-An often cited Kentucky (state court) case which explicitly recognized college officials as standing "in loco parentis"

3. Englehart v. Serena, 300 S.W. 268 (1927)

-A student expelled from a state teacher's college dormitory for refusing to sign a pledge to "properly conduct himself" could not recover damages.

4. Anthony v. Syracuse University, 235 N.Y.S. 435 (1928)

-A New York (state court) case which upheld the university's dismissal of a student without giving a reason other than that she was not "a typical Syracuse girl"

5. Frank v. Marquette University, 245 N.W. 125 (1932)

-The court gave broad discretion to colleges and universities in dismissing students and said that courts would not interfere so long as colleges act in response to "sufficient reasons."

6. State ex rel Sherman v. Hyman, 171 S.W. 2d. 822, cert denied 319 U.S. 748(1943).

- "The governing authority of the ...University of Tennessee has the inherent right to expel students for acts which are contrary to good morals, or which tend to lower the students of the school in any respect, and such authority will not be required to follow technical rules of procedure in bringing to trial students who have committed an offense against the institution."

7. Dixon v. Alabama State Board of Education, 294 F.2d. 150 (5th Cir. 1961)

-The court rejected the idea that education in a state college was a "privilege" which could be governed by whatever standards the state deemed desirable; it also implicitly rejected the "in loco parentis" doctrine.

8. Esteban v. Central Missouri State College, 277 F.Supp. 649 (W.D. Mo. 1967)

-Set out nine specific steps of procedural due process in a case in which students challenged a two-semester suspension for engaging in protest demonstrations.

9. Furutani v. Ewigleben, 297 F. Supp. 1163 (N.D. Cal. 1969)
-Students in campus proceedings may be forced to speak (or negative inference may be drawn from their silence), but if forced to incriminate themselves, and that testimony is offered against them in subsequent criminal proceedings, they can invoke Supreme Court precedents in opposition to the offer.
10. Goss v. Lopez, 419 U.S. 565 (1975)
- A landmark Supreme Court case involving high school students; set out basic due process requirements that are often applied in the higher education context.
11. Gaspar v. Bruton, 513 F.2d. 843 (10th Cir. 1975)
-The first case to afford any procedural due process in an academic dismissal case; the court only required prior notice of impending failure and dismissal.
12. Board of Curators of the University of Missouri v. Horowitz, 435 U.S. 78 (1978)
-The Supreme Court distinguished the procedural due process requirements for disciplinary dismissal from the (minimal) due process requirements for academic dismissal from an institution of higher education.
13. Tedeschi v. Wagner College, 404 N.E. 2d.1302 (1980)
-New York's highest court overruled a suspension from a private institution, holding the "when a university has adopted a rule or guideline establishing the procedure to be followed in relation to suspension or expulsion, that procedure must be substantially observed."
14. Napolitano v. Trustees of Princeton University, 453 A.2d.263 (N.J.Superior Ct., App. Div. 1982)
-The court distinguished "academic disciplinary actions" (here, withholding a degree for one year for plagiarism) from disciplinary action for other types of "misconduct," deferring more to the institution in the former context and declaring that lesser "due process" protection was required.

B. FREEDOM OF EXPRESSION

A student in a law school, accused of sending an annoying letter to a lady student, during an investigation of the matter by the faculty, persistently affirmed...that a fellow student had given him a letter to pass on to its destination. The first accused student was proven guilty of sending the letter and was expelled for deliberately bearing false witness against his fellow student.

Goldstein v. N.Y.U. (1902)

B. Freedom of Expression

1. Hamilton v. Regents of the University of California, 293 U.S. 245 (1934)
 - The Supreme Court upheld an order that student conscientious objectors must take military training as a condition of attending the institution. The Court accepted the proposition that attendance at a public postsecondary institution was a privilege not a right.
2. Hammond v. South Carolina State College, 272 F. Supp. 974 (D.S.C. 1967)
 - The court held a regulation invalid as impermissible prior restraint of speech, which stated "the student body is not to celebrate or demonstrate on the campus at any time without approval of the office of the president." Students who were expelled for violating this rule were reinstated.
3. Barker v. Hardway, 283 F. Supp. 228 (S.W.D.Va.), affd. 399 F.2d. 638 (4th Cir. 1968)
 - Students may be suspended if they violate conduct rules by actively participating in a disruptive demonstration "by abusive and disorderly acts and conduct" depriving the spectators "of the right to see and enjoy the (football) game..." In the same case, however, one of the students was exonerated: "...the other suspended student, was the leader of a 'sing in' after midnight" on the college president's lawn; these actions included no violence. The court held that "though it was obviously designed to further harass and annoy (the president) and was in violation of the rules of the school, it may have been permissible under the first amendment." Thus that student's suspension was revoked.
4. Tinker v. Des Moines School District, 393 U.S. 503 (1969)
 - The famous "black armbands" case and the case containing the quote that students "do not shed their constitutional rights at the school house gate." A high school protest case which was applied to higher education through the Healy case (below).
5. Stacy v. Williams, 306 F. Supp. 963 (N.D. Miss. 1969)
 - "...one cannot simply be restrained from speaking, and his audience cannot be prevented from hearing him, unless the feared result is likely to be engendered by what the speaker himself says or does."
6. Healy v. James, 408 U.S. 169 (1972)
 - "State colleges and universities are not enclaves immune from the sweep of the First Amendment...Of course, as Mr. Justice Fortas made clear in Tinker, First Amendment rights must always be applied 'in light of the special characteristics of the ..environment' in the particular case." (SDS recognition)
7. Shamloo v. Mississippi State board of trustees, 620 F.2d. 516 (5th Cir. 1980)
 - In order to conclude that a demonstration not protected by the First Amendment, the court required: (1) that the disruption be a material disruption (of classwork in this case) or (2) that it involve substantial disorder or invasions of the rights of others. (Iranian Nationals protest)

8. Gay Liberation v. University of Missouri, 558 F.2d. 848 (8th Cir. 1977)

-The court prohibited the university's denial of the recognition of this student group because it found that, at worst, the group intended peaceably to advocate the repeal of certain criminal laws. The court determined this to be constitutionally protected expression. (The university cited a predictable increase in sodomy, a felony under Missouri law, as its reason for denial.)

9. Larson v. Board of Regents of the University of Nebraska,
204 N.W. 2d. 568 (Neb. 1973)

-Student challenges to mandatory fee allocations for the student newspaper and the visiting-speakers program, whose views these students opposed, were rejected. The institutions fee allocations must provide for a broad spectrum of views.

10. American Futures Systems, Inc. v. Pennsylvania State University,
752 F.2d. 854 (3rd Cir. 1984) reh denied (1985)

-Distinguished "commercial speech" from other forms of speech; case dealt partly with the right of students to hear speech. Students did have a right to hear the "demonstration speech" on AFS's products, but there were restrictions placed on the solicitation and consummation of sales in the residence halls at Penn State.

11. University of Utah Students Against Apartheid v. Peterson,
~~641~~ F.Supp. ~~1200~~ (1986)

-The court enjoined the university president from removing shanties from the campus except where there are violations of time, place and manner regulations. The court further ordered that the shanties be made portable and be removed at night, pending the enactment of the university's rules and regulations (opinion not reported as yet).

C. SEARCH AND SEIZURE/ PRIVACY

"The college does not stand strictly speaking in loco parentis to its students... A student naturally has the right to be free of unreasonable searches and seizures and a tax-supported public college may not compel a 'waiver' of that right. The college, on the other hand, has an 'affirmative obligation' to promulgate reasonable rules and regulations...and to promote an environment consistent with the educational process."

-Moore v. Student Affairs Committee, (1968)

C. Search and Seizure/Privacy

1. Moore v. Student Affairs Committee of Troy State University, 284 F.Supp. 715 (M.D. Ala. 1968)
 - Court upheld a warrantless search of a dormitory room by the dean and two state officials, for suspected drugs. The standard required for such a search was "reasonable cause to believe" (illegal activity was taking place), and was based on the "special necessities of the student-college relationship."
2. Piazzola v. Watkins, 442 F.2d. 284 (5th Cir. 1971)
 - Authority to search on less than "probable cause" could not be delegated to third parties such as police officers who may want to search for criminal evidence. Rejected the Moore case.
3. Smyth v. Lubbers, 398 F.Supp. 777 (W.D. Mich. 1975)
 - Invalidated a warrantless dormitory search conducted by campus police. It found groundless the college's claim of consensual right of entry contained in the residence hall contract. The "special relationship" rationale in Moore was rejected when it was applied to basic Fourth Amendment rights.
4. Washington v. Chrisman, 455 U.S. 1 (1982)
 - Supreme Court held that an officer who arrested a student outside his dormitory room by campus police (for alcohol violation) and accompanied that student to his room to obtain identification, could act on incriminating evidence within "plain view." In this case the officer observed marijuana in the room while he was waiting for the student in the hallway- the student's door was open.
5. New Jersey v. T.L.O., 105 S.Ct. 733 (1985)
 - School official's warrantless search of a student's purse (in which marijuana was found) was held valid as the vice-principal in this case had "reasonable suspicion" that the student was engaged in illegal activity. The court balanced the student's privacy interests against the school's interest in furthering "publicly mandated educational and disciplinary policies." This is a high school case which discusses search and seizure in the schools in great length. It may be inferred that the Supreme Court's rationale in this case could be extended to higher education settings.
6. Washington v. Dalton, 716 P.2d. 940 (Ct. App. Wash. 1986)
 - No reasonable expectation of privacy exists in a dormitory room being used to conduct illegal drug transactions; selling cocaine to an undercover officer was a felony in presence of officer- therefore no warrant was required; no consent was needed for undercover police officer to enter, without a warrant, a dormitory room used for sale of controlled substances. (a state court case)

**for further reading on this subject see:

"Shall the Truce be Unbroken? New Jersey v. T.L.O. and Higher Education", 12 J. Coll. and Univ. Law 415 (1985)

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Joint Statement
on Rights and Freedoms
of Students

In June, 1967, a joint committee, comprised of representatives from the American Association of University Professors, U. S. National Student Association, Association of American Colleges, National Association of Student Personnel Administrators, and National Association of Women Deans and Counselors, met in Washington, D.C., and drafted the Joint Statement on Rights and Freedoms of Students published below.

The multilateral approach which produced this document was also applied to the complicated matter of interpretation, implementation, and enforcement, with the drafting committee recommending (a) joint efforts to promote acceptance of the new standards on the institutional level, (b) the establishment of machinery to facilitate continuing joint interpretation, (c) joint consultation before setting up any machinery for mediating disputes or investigating complaints, and (d) joint approaches to regional accrediting agencies to seek embodiment of the new principles in standards for accreditation.

Since its formulation, the Joint Statement has been endorsed by each of its five national sponsors, as well as by a number of other professional bodies. The endorsers are listed below (sponsors are indicated by an asterisk):

- *U. S. National Student Association
- *Association of American Colleges
- *American Association of University Professors
- *National Association of Student Personnel Administrators
- *National Association of Women Deans and Counselors

American Association for Higher Education
Jesuit Education Association
American College Personnel Association
Executive Committee, College and University Department, National Catholic Education Association
Commission on Student Personnel, American Association of Junior Colleges

Preamble

Academic institutions exist for the transmission of knowledge, the pursuit of truth, the development of students, and the general well-being of society. Free inquiry and free expression are indispensable to the attainment of these goals. As members of the academic community, students should be encouraged to develop the capacity for critical judgment and to engage in a sustained and independent search for truth. Institutional procedures for achieving these purposes may vary from campus to campus, but the minimal standards of academic freedom of students outlined below are essential to any community of scholars.

Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility.

The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the academic community. Each college and university has a duty to develop policies and procedures which provide and safeguard this freedom. Such policies and procedures should be developed at each institution within the framework of general standards and with the broadest possible participation of the members of the academic community. The purpose of this statement is to enumerate the essential provisions for student freedom to learn.

I. Freedom of Access to Higher Education

The admissions policies of each college and university are a matter of institutional choice provided that each college and university makes clear the characteristics and ex-

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pectations of students which it considers relevant to success in the institution's program. While church-related institutions may give admission preference to students of their own persuasion, such a preference should be clearly and publicly stated. Under no circumstances should a student be barred from admission to a particular institution on the basis of race. Thus, within the limits of its facilities, each college and university should be open to all students who are qualified according to its admission standards. The facilities and services of a college should be open to all of its enrolled students, and institutions should use their influence to secure equal access for all students to public facilities in the local community.

II. In the Classroom

The professor in the classroom and in conference should encourage free discussion, inquiry, and expression. Student performance should be evaluated solely on an academic basis, not on opinions or conduct in matters unrelated to academic standards.

A. Protection of Freedom of Expression. Students should be free to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course of study for which they are enrolled.

B. Protection Against Improper Academic Evaluation. Students should have protection through orderly procedures against prejudiced or capricious academic evaluation. At the same time, they are responsible for maintaining standards of academic performance established for each course in which they are enrolled.

C. Protection Against Improper Disclosure. Information about student views, beliefs, and political associations which professors acquire in the course of their work as instructors, advisers, and counselors should be considered confidential. Protection against improper disclosure is a serious professional obligation. Judgments of ability and character may be provided under appropriate circumstances, normally with the knowledge or consent of the student.

III. Student Records

Institutions should have a carefully considered policy as to the information which should be part of a student's permanent educational record and as to the conditions of its disclosure. To minimize the risk of improper disclosure, academic and disciplinary records should be separate, and the conditions of access to each should be set forth in an explicit policy statement. Transcripts of academic records should contain only information about academic status. Information from disciplinary or counseling files should not be available to unauthorized persons on campus, or to any person off campus without the express consent of the student involved except under legal compulsion or in cases where the safety of persons or property is involved. No records should be kept which reflect the political activities or beliefs of students. Provision should also be made for periodic routine destruction of noncurrent disciplinary records. Administrative staff and faculty members should respect confidential information about students which they acquire in the course of their work.

IV. Student Affairs

In student affairs, certain standards must be maintained if the freedom of students is to be preserved.

A. Freedom of Association. Students bring to the campus a variety of interests previously acquired and develop many new interests as members of the academic community. They should be free to organize and join associations to promote their common interests.

1. The membership, policies, and actions of a student organization usually will be determined by vote of only those persons who hold bona fide membership in the college or university community.

2. Affiliation with an extramural organization should not of itself disqualify a student organization from institutional recognition.

3. If campus advisers are required each organization should be free to choose its own adviser, and institutional recognition should not be withheld or withdrawn solely because of the inability of a student organization to secure

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an adviser. Campus advisers may advise organizations in the exercise of responsibility, but they should not have the authority to control the policy of such organizations.

4. Student organizations may be required to submit a statement of purpose, criteria for membership, rules of procedures, and a current list of officers. They should not be required to submit a membership list as a condition of institutional recognition.

5. Campus organizations, including those affiliated with an extramural organization, should be open to all students without respect to race, creed, or national origin, except for religious qualifications which may be required by organizations whose aims are primarily sectarian.

B. Freedom of Inquiry and Expression.

1. Students and student organizations should be free to examine and to discuss all questions of interest to them, and to express opinions publicly and privately. They should always be free to support causes by orderly means which do not disrupt the regular and essential operation of the institution. At the same time, it should be made clear to the academic and the larger community that in their public expressions or demonstrations students or student organizations speak only for themselves.

2. Students should be allowed to invite and to hear any person of their own choosing. Those routine procedures required by an institution before a guest speaker is invited to appear on campus should be designed only to insure that there is orderly scheduling of facilities and adequate preparation for the event, and that the occasion is conducted in a manner appropriate to an academic community. The institutional control of campus facilities should not be used as a device of censorship. It should be made clear to the academic and larger community that sponsorship of guest speakers does not necessarily imply approval or endorsement of the views expressed, either by the sponsoring group or the institution.

C. Student Participation in Institutional Government.

As constituents of the academic community, students should be free, individually and collectively, to express their views on issues of institutional policy and on matters of general interest to the student body. The student body should have

clearly defined means to participate in the formulation and application of institutional policy affecting academic and student affairs. The role of the student government and both its general and specific responsibilities should be made explicit, and the actions of the student government within the areas of its jurisdiction should be reviewed only through orderly and prescribed procedures.

D. Student Publications. Student publications and the student press are a valuable aid in establishing and maintaining an atmosphere of free and responsible discussion and of intellectual exploration on the campus. They are a means of bringing student concerns to the attention of the faculty and the institutional authorities and of formulating student opinion on various issues on the campus and in the world at large.

Whenever possible the student newspaper should be an independent corporation financially and legally separate from the university. Where financial and legal autonomy is not possible the institution, as the publisher of student publications, may have to bear the legal responsibility for the contents of the publications. In the delegation of editorial responsibility to students the institution must provide sufficient editorial freedom and financial autonomy for the student publications to maintain their integrity of purpose as vehicles for free inquiry and free expression in an academic community.

Institutional authorities, in consultation with students and faculty, have a responsibility to provide written clarification of the role of the student publications; the standards to be used in their evaluation, and the limitations on external control of their operation. At the same time, the editorial freedom of student editors and managers entails corollary responsibilities to be governed by the canons of responsible journalism, such as the avoidance of libel, indecency, undocumented allegations, attacks on personal integrity, and the techniques of harassment and innuendo. As safeguards for the editorial freedom of student publications the following provisions are necessary:

1. The student press should be free of censorship and advance approval of copy, and its editors and managers should be free to develop their own editorial policies and news coverage.

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2. Editors and managers of student publications should be protected from arbitrary suspension and removal because of student, faculty, administrative, or public disapproval of editorial policy or content. Only for proper and stated causes should editors and managers be subject to removal and then by orderly and prescribed procedures. The agency responsible for the appointment of editors and managers should be the agency responsible for their removal.

3. All university published and financed student publications should explicitly state on the editorial page that the opinions there expressed are not necessarily those of the college, university or student body.

V. Off-Campus Freedom of Students

A. Exercise of Rights of Citizenship. College and university students are both citizens and members of the academic community. As citizens, students should enjoy the same freedom of speech, peaceful assembly, and right of petition that other citizens enjoy and, as members of the academic community, they are subject to the obligations which accrue to them by virtue of this membership. Faculty members and administrative officials should insure that institutional powers are not employed to inhibit such intellectual and personal development of students as is often promoted by their exercise of the rights of citizenship both on and off campus.

B. Institutional Authority and Civil Penalties. Activities of students may upon occasion result in violation of law. In such cases, institutional officials should be prepared to apprise students of sources of legal counsel and may offer other assistance. Students who violate the law may incur penalties prescribed by civil authorities, but institutional authority should never be used merely to duplicate the function of general laws. Only where the institution's interests as an academic community are distinct and clearly involved should the special authority of the institution be asserted. The student who incidentally violates institutional regulations in the course of his off-campus activity, such as those relating to class attendance, should be subject to no greater penalty than would normally be imposed. Institutional action should be independent of community pressure.

VI. Procedural Standards in Disciplinary Proceedings

In developing responsible student conduct, disciplinary proceedings play a role substantially secondary to example, counseling, guidance, and admonition. At the same time, educational institutions have a duty and the corollary disciplinary powers to protect their educational purpose through the setting of standards of scholarship and conduct for the students who attend them and through the regulation of the use of institutional facilities. In the exceptional circumstances when the preferred means fail to resolve problems of student conduct, proper procedural safeguards should be observed to protect the student from the unfair imposition of serious penalties.

The administration of discipline should guarantee procedural fairness to an accused student. Practices in disciplinary cases may vary in formality with the gravity of the offense and the sanctions which may be applied. They should also take into account the presence or absence of an Honor Code, and the degree to which the institutional officials have direct acquaintance with student life, in general, and with the involved student and the circumstances of the case in particular. The jurisdictions of faculty or student judicial bodies, the disciplinary responsibilities of institutional officials and the regular disciplinary procedures, including the student's right to appeal a decision, should be clearly formulated and communicated in advance. Minor penalties may be assessed informally under prescribed procedures.

In all situations, procedural fair play requires that the student be informed of the nature of the charges against him, that he be given a fair opportunity to refute them, that the institution not be arbitrary in its actions, and that there be provision for appeal of a decision. The following are recommended as proper safeguards in such proceedings when there are no Honor Codes offering comparable guarantees.

A. Standards of Conduct Expected of Students. The institution has an obligation to clarify those standards of behavior which it considers essential to its educational mission and its community life. These general behavioral expectations and the resultant specific regulations should represent a reasonable regulation of student conduct but the student should be as free as possible from imposed limitations that have no direct relevance to his education. Offenses should be as clearly defined as possible and interpreted in a manner consistent with the aforementioned principles of relevancy

and reasonableness. Disciplinary proceedings should be instituted only for violations of standards of conduct formulated with significant student participation and published in advance through such means as a student handbook or a generally available body of institutional regulations.

B. Investigation of Student Conduct.

1. Except under extreme emergency circumstances premises occupied by students and the personal possessions of students should not be searched unless appropriate authorization has been obtained. For premises such as residence halls controlled by the institution, an appropriate and responsible authority should be designated to whom application should be made before a search is conducted. The application should specify the reasons for the search and the objects or information sought. The student should be present, if possible, during the search. For premises not controlled by the institution, the ordinary requirements for lawful search should be followed.

2. Students detected or arrested in the course of serious violations of institutional regulations, or infractions of ordinary law, should be informed of their rights. No form of harassment should be used by institutional representatives to coerce admissions of guilt or information about conduct of other suspected persons.

C. Status of Student Pending Final Action. Pending action on the charges, the status of a student should not be altered, or his right to be present on the campus and to attend classes suspended, except for reasons relating to his physical or emotional safety and well-being, or for reasons relating to the safety and well-being of students, faculty, or university property.

D. Hearing Committee Procedures. When the misconduct may result in serious penalties and if the student questions the fairness of disciplinary action taken against him, he should be granted, on request, the privilege of a hearing before a regularly constituted hearing committee. The following suggested hearing committee procedures satisfy the requirements of "procedural due process" in situations requiring a high degree of formality:

1. The hearing committee should include faculty members or students, or, if regularly included or requested

by the accused, both faculty and student members. No member of the hearing committee who is otherwise interested in the particular case should sit in judgment during the proceeding.

2. The student should be informed, in writing, of the reasons for the proposed disciplinary action with sufficient particularity, and in sufficient time, to insure opportunity to prepare for the hearing.

3. The student appearing before the hearing committee should have the right to be assisted in his defense by an adviser of his choice.

4. The burden of proof should rest upon the officials bringing the charge.

5. The student should be given an opportunity to testify and to present evidence and witnesses. He should have an opportunity to hear and question adverse witnesses. In no case should the committee consider statements against him unless he has been advised of their content and of the names of those who made them, and unless he has been given an opportunity to rebut unfavorable inferences which might otherwise be drawn.

6. All matters upon which the decision may be based must be introduced into evidence at the proceeding before the Hearing Committee. The decision should be based solely upon such matter. Improperly acquired evidence should not be admitted.

7. In the absence of a transcript, there should be both a digest and a verbatim record, such as a tape recording, of the hearing.

8. The decision of the Hearing Committee should be final, subject only to the student's right of appeal to the President or ultimately to the governing board of the institution.